

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:18-CV-00211-D

TAYLOR FISSE and BRYAN REES, individually	)	
and on behalf of all others similarly situated,	)	
	)	<b>DEFENDANT AUDIBLE, INC.'S</b>
Plaintiffs,	)	<b>MOTION TO COMPEL ARBITRATION</b>
	)	<b>9 U.S.C. §§ 1-14</b>
v.	)	
	)	
AUDIBLE, INC.,	)	
	)	
Defendant.	)	
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This case centers on a couple who share an Amazon account, and an allegedly unauthorized charge to a card on file with that account to pay subscription fees for a membership with Audible, an audiobook entertainment service affiliated with Amazon. Pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-14, and Rule 7.1 of the Court's Local Civil Rules, Defendant Audible, Inc. respectfully moves to compel Plaintiffs Taylor Fisse and Bryan Rees's claims to binding arbitration.<sup>1</sup>

The grounds for the motion include the following:

1. Plaintiff Fisse repeatedly agreed to arbitrate any dispute relating in any way to the use of Audible when she signed up for Audible memberships, and when she purchased audiobooks using Audible membership credits, by assenting to Audible's Conditions of Use.
2. Both Plaintiffs repeatedly agreed to arbitrate any dispute relating in any way to the use of Amazon and/or the services of any Amazon affiliate, including Audible, on hundreds of occasions when they made purchases from Audible's parent company, Amazon.com, Inc., and thus manifested their assent to Amazon's Conditions of Use.
3. This lawsuit falls within the scope of Plaintiffs' agreements to arbitrate with Audible and Amazon, both under the plain language of those agreements and under principles of equitable estoppel.

Audible bases its request to compel arbitration on this motion; the memorandum of points and

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<sup>1</sup> This motion satisfies Audible's obligation to respond to Plaintiffs' Third Amended Complaint at this stage. *Lamkin v. Morinda Props. Weight Parcel, LLC*, 440 F. App'x 604, 607 (10th Cir. 2011); *see also JS Barkats, PLLC v. BE, Inc.*, No. 12 Civ. 6779 (JFK), 2013 WL 444919, at \*2 (S.D.N.Y. Feb. 6, 2013) ("[P]arties are permitted to file motions to stay in lieu of an answer or other dispositive motions."); *accord Workalemahu v. Heritage Club*, No. 14-CV-02396-RM-MEH, 2015 WL 293261, at \*2 & n.2 (D. Colo. Jan. 21, 2015). Audible reserves the right to file a Rule 12(b) motion at a later time.

authorities in support thereof; the declarations of Gregg Bryan, Jason Massello, Kausik Basu, Erin Murphy, Karen Ressmeyer, Hery Hope, and Sorin Stoiana in support of this motion and all exhibits thereto; all documents in the Court's file; and on such other arguments as may be presented to the Court. For these reasons, as well as the more detailed reasons stated in the accompanying memorandum of law, Audible respectfully requests that the Court grant its motion, compel all of Plaintiffs' claims to arbitration, and dismiss the Third Amended Complaint in its entirety.

Dated: July 6, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on July 6, 2018.

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